

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

No. 217-2025-CV-480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

OBJECTION TO MOTION FOR CLASS CERTIFICATION

The State of New Hampshire, Governor Kelly Ayotte, and Attorney General John Formella, by and through counsel, submit this objection to the plaintiffs' motion to certify this case as a class action and appoint class counsel:

1. The plaintiffs have moved to certify this matter as a class action under Superior Court Civil Rule 16.
2. The defendants take no position on whether the plaintiffs have satisfied the prerequisites for maintaining a class action identified in Rule 16(a)(1), (3), (4), (5), and (6), and ask that the Court hold the plaintiffs to their burden under those prerequisites.
3. As set forth in the defendants' motion to dismiss, the defendants do take a position on whether the plaintiffs have met their burden under Rule 16(a)(2), which requires that "questions of law or fact common to the class . . . predominate over questions affecting only individual members."
4. The plaintiffs have not demonstrated that this requirement is satisfied with respect to the class of plaintiffs they propose.

5. For instance, while the plaintiffs allege that they will be injured if the Attorney General is allowed to accept or reject awards, they fail to explain how this alleged injury runs to the class as a whole when no individual claimant is guaranteed *any* award from the Administrator, the Administrator can award a claimant no money at all, and the Attorney General has the ability to accept or reject a settlement amount in any other civil case against the State for monetary damages.

6. The plaintiffs likewise fail to explain how claimants who would otherwise reject an award made by the Administrator would be injured by the Attorney General's ability to also reject that award.

7. The plaintiffs also fail to explain how their concerns about the changes to how the Administrator is appointed or removed extend to those members of the putative class who would resolve their claims by agreement with the Attorney General.

8. In related contexts, judges have rejected what are essentially individualized due process concerns that turn on the facts and circumstances of particular plaintiffs, and not on questions common to the class as a whole. *See, e.g., G.K. v. Sununu*, 2021 DNH 143, 2021 U.S. Dist. LEXIS 170962, at *12 (D.N.H., Sept. 9, 2021).

9. If the Court nonetheless concludes that the requirements of Rule 16(a) are met, it should modify the proposed class definition to the following:

All individuals who: (i) filed a "claim" with the Youth Development Center Claims Administration and Settlement Fund on or before June 30, 2025; (ii) had parallel civil litigation stayed by virtue of filing a claim; and (iii) did not receive a decision from the administrator before June 1, 2025.

10. This simplified class definition captures the same group of individuals that the plaintiffs' proposed class definition captures but omits unnecessary or irrelevant legal conclusions and argumentative language contained in the plaintiffs' proposal.

WHEREFORE, the defendants respectfully request that this Honorable Court:

- A. Deny the plaintiffs' motion;
- B. If inclined to grant the motion, modify the class definition; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

Governor Kelly Ayotte; Attorney General John
Formella; State of New Hampshire

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: August 25, 2025

By: /s/ Samuel Garland
Anthony J. Galdieri, Bar No. 18594
Solicitor General
Samuel Garland, Bar No. 266273
Senior Assistant Attorney General
James H. Holl, Bar No. 279633
Attorney
New Hampshire Department of Justice
1 Granite Place South
Concord, NH 03301
Phone: (603) 271-3658
anthony.j.galdieri@doj.nh.gov
samuel.rv.garland@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection was sent via the Court's electronic filing system to all parties of record.

Date: August 25, 2025

/s/ Samuel Garland
Samuel Garland